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EXAMINER

BRADEN, SHAWN M

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

02/01/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Office Action Summary

Application No.

10/581,239

Applicant(s)

ARSLANKIRAY ET AL.

Examiner

SHAWN M. BRADEN

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☒ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 32,35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims each of the wall sections is located diametrically opposite to a recess, but viewing fig. 1 the walls located at the end panels face each other in an end to end relationship.
3. Claims 32,35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Since applicant's own disclosure does not meet the new claims, it is considered new matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-30,31,32,34,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fierek (USPN 5,669,498) in view of Cox (USPN 5,344,023).

Fierek discloses the invention substantially as claimed.

5. With respect to claim 13, Fierek shows a support plate (68,70,72,74) in which a plurality of receptacles (18,20,22,24) for respectively one egg is formed, and a wall (102) surrounding the support plate, and that the surrounding wall (102) is divided into a plurality of wall sections separated by recesses (80,82,84,86).
6. With respect to claim 14, Fierek shows the wall (102) sections are each constructed such that they project over the circumference of the support plate (fig. 4).
7. With respect to claim 15, Fierek shows a section of the circumference of the support plate (68,70,72,74) on which an upright wall section (102) is arranged so that it projects over the circumference is located diametrically opposite to a section of the circumference on which a recess (80,82,84,86) is located.
8. With respect to claim 16, Fierek shows, wherein at least two wall sections (112) are arranged on a longitudinal edge of the support plate.
9. With respect to claim 17, Fierek shows further comprising a spacer (the recess at the distal end of 68,70,72,74 shown but not labeled) disposed on an underside of the support plate.
10. With respect to claim 18, Fierek shows further comprising a second egg tray (16) including a second support plate (68,70,72,74) in which a plurality of receptacles (18,20,22,24) for respectively one egg is formed, and a second wall (102) surrounding

the second support plate, wherein the second surrounding wall is divided into a plurality of second wall sections separated by recesses (80,82,84,86).

11. With respect to claim 19, Fierek shows the wall sections of the egg tray differ in height from the second wall sections of the second egg tray (fig. 1).

12. With respect to claim 20, Fierek shows the wall sections of the egg tray and the second wall sections of the second egg tray (16) have substantially the same dimensions with regard to height (to the extent "substantially the same" is defined, fig. 1 also meets this claim language).

13. With respect to claim 21, Fierek shows the two egg trays can be stacked by engagement of the wall sections of one of the egg trays into the recesses (80,82,84,86) of the other egg tray (fig. 9).

14. With respect to claim 22, Fierek shows a handle (26) projecting from the support plate (68,70,72,74) above its center of gravity.

15. With respect to claim 23, Fierek shows wherein in addition to the handle, a slit (28 col 5 line 43) is formed in the support plate (68,70,72,74) through which a handle (26) of a second egg tray (16) can be passed.

16. With respect to claim 24, Fierek shows wherein the handle (26) has the form of a plate (any of the handles surfaces have the form of a plate fig. 8) and that one surface of the plate (the left side of the handle) is directly adjacent to the slit (28).

17. With respect to claim 25, Fierek shows wherein the plate (left side of the handle) is thicker in its upper area (thickness increases when traveling up the left side meets the top plate of the handle 26).

18. With respect to claim 26, Fierek shows a first egg tray (14) and a second egg tray, each egg tray having a support plate (68,70,72,74) in which a plurality of receptacles (18,20,22,24) for respectively one egg is formed, and a wall (102) surrounding the support plate, and that the surrounding wall is divided into a plurality of wall sections separated by recesses (60,62,64); a handle (26) projecting upwardly from the support plate (68,70,72,74) of each egg tray above its center of gravity and a slit (28 col 5 line 43) is formed in the support plate (68,70,72,74) of each egg tray, the handle (26) of one of the egg trays being receivable through the slit (28 col 5 line 43) of the other egg tray to interconnect the egg trays; and the first and second egg trays being stackable (fig. 10 last paragraph of col 4) with one another by engagement of the wall (102) sections of one of the egg trays into the recesses (60,62,64) of the other egg tray.
19. With respect to claim 27, Fierek shows wherein the wall sections of the first egg tray (14) differ in height from the wall sections of the second egg tray (16) (fig.1).
20. With respect to claim 28, Fierek shows wherein the wall sections of the first and second egg trays have substantially the same dimensions with regard to height (to the extent "substantially the same" is defined, fig. 1 also meets this claim language).
21. With respect to claim 29, Fierek shows wherein each egg tray includes a spacer (the recess at the distal end of 68,70,72,74 shown but not labeled) disposed on an underside of the support plate, the spacer of one of the egg trays contacting a top side of the support plate (68,70,72,74) of the other egg tray to space the support plates of the respective egg trays apart from one another when the egg trays are stacked one above the other.

22. With respect to claim 30, Fierek shows wherein the receptacles of the first and second trays are aligned with one another when the egg trays are stacked (fig. 9).

23. With respect to claim 31, Fierek shows wherein the support plate (68,70,72,74) has an upper surface (top surface) and a lower surface (bottom surface), and wherein the wall sections (112 which are part of 102) project over a circumference of the support plate and downward from the support plate in a direction opposite from the upper surface.

24. With respect to claim 32, Fierek shows, to the extent the claim is understood, wherein each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall.

25. With respect to claim 34, Fierek shows containers capable of performing when the egg tray and the second egg tray are twisted 180° with respect to each other and stacked together, the plurality of wall sections of the egg tray engage the recesses of the second egg tray, and the plurality of second wall sections of the second egg tray engage the recesses of the egg tray. (the broad term "engage" is met by the interaction of two of Fierek trays that interlock. when stacked).

26. With respect to claim 35, Fierek shows, to the extent the claim is understood, all of the understood structure has been cited in the combined rejection.

27.

However Fierek does not disclose wherein the receptacles are formed by openings in the support plate.

Cox teaches wherein the receptacles (30) are formed by openings in the support plate (28) in the same field of endeavor for the purpose of holding eggs.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add openings in the bottoms of (18,20,22,24) of the first and second tray in order to keep the eggs from rolling around in the container.

28. Claims 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Fierek in view of Cox as applied to claim 13 above, and further in view of Peebles (USPN 3,392,874).

Fierek in view of Cox discloses the invention substantially as claimed. However Fierek in view of Cox does not disclose the handle is a plate, and wherein only one surface of the handle is directly adjacent to the slit.

Peebles teaches the handle is a plate (16e), and wherein only one surface of the handle is directly adjacent to the slit (15) in the same field of endeavor for the purpose of stacking.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the handle design of the top container of Peeble to the container of Fierek in view of Cox in order to have a cheaper to make flat handle that allows stacking.

29.

Response to Arguments

30. Applicant's arguments filed 11/18/2009 have been fully considered but they are not persuasive.

31. In response to applicant's that the references do not show " a refrigerator".

Applicant has not positively claimed a refrigerator, In response to applicant's argument that for a refrigerator, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

32. In response to applicant's arguments, the recitation for a refrigerator, has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

33. In response to applicant's argument that the combination would not be obvious, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

34. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., in order to provide free access or cold air to the lower end) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

35. In response to applicant's argument that "the alleged recesses 80, 82, 84, 86 of the Fierek et al. reference would serve to limit access to cold air to the upper end of each egg mounted in the alleged openings", as stated before applicant has not claimed cold air access, also the rejection as a whole includes Cox, which teaches openings, which would further allow air movement.

36. In response to applicant's argument "The Cox et al. reference also does not teach or suggest dividing the surrounding wall into a plurality of wall sections separated by recesses in order to provide access to cold air to the lower end of each egg mounted in the alleged openings. Instead, the Cox et al. reference teaches only an uninterrupted peripheral wall 32 surrounding the alleged plate 28". Again reviewing the rejection as a whole, Fierek is shown in combination to show the limitations.

37. In response to applicant's argument protesting claim 26, applicant's language of "wall" and "slit" and "handle" "engagement" is broad and the combination reads on the claims language, the reiteration of the claims has not proven novelty or non-obvious over the cited art.

38. In response to applicant's argument "As shown in Figure 10 of the Fierek et al. reference, the walls 102 that surround the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 80, 82, 84, 86 of a second egg tray when stacked together. Instead, the trays rest on top of each other"

39. "Moreover, even if the trays we nested within each other, the walls 102 that surround the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 80, 82, 84, 86 of a second egg tray when stacked together. Indeed, the walls 102 clearly would not fit into the recesses 80, 82, 84, 86 of a second egg tray " Examiner never referenced fig. 10, it is a different embodiment. The term "engage" interpreted by examiner as "To interlock or cause to interlock". The functional language is met when two of the containers of the combination applied to the claim would be stacked. The structure defined in the rejection meets the broad interpretation of cause to interlock. The language of "fit" is not claimed and the argument has not proven novelty or non-obviousness.

40. In response to "Moreover, none of the applied references discloses or suggests a handle projecting upwardly from the support plate of each egg tray above its center of gravity and a slit being formed in the support plate of each egg tray, the handle of one of the egg trays being receivable through the slit of the other egg tray to interconnect the egg trays. Contrary to the assertions in the Office Action, the Fierek et al. reference clearly does not disclose or suggest a slit formed in the egg tray that receives the handle of another egg tray. Instead, the Fierek et al. reference explicitly discloses a hollow interior 28, not a slit. See, e.g., col. 5, lines 43-45." The handle (26) of Fierek

clearly meets the claimed handle, and applicant agrees that the handle can be placed into the hollow interior of the receiving container. Examiner believes this hollow area meets the broad interpretation of a "slit". Examiner interprets "slit" as an opening and Fierek clearly meets this broad claim language.

41. In response to " For example, none of the applied references discloses or suggests at least that a section of the circumference of the support plate on which an upright wall section is arranged so that it projects over the circumference is located diametrically opposite to a section of the circumference on which a recess is located. In this manner, the present invention provides an egg tray that can be stacked with a second egg tray in a configuration twisted by 180° with respect to one another, where respectively one wall section of one egg tray engages in a gap between two wall sections of the other egg tray, thereby providing an extremely stable and space-saving stacking of the egg trays. See, e.g., page 2, lines 13-21; paragraph [008].

42. As shown in Figures 2 and 3, the Fierek et al. reference clearly does not disclose or suggest that the wall sections are located diametrically opposite to a section of the circumference on which a recess is located. Instead, each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 80, 82, 84, 86."

43. First, twisting the container 180 degrees is not found in the claims. As to the diametric opposition of " a section of the circumference of the support plate" and "recess" of claim 15 only, Attention is drawn for example to Fierek fig. 4 or fig. 5, the recesses (80 and 82) are clearly shows directly above these recesses in the support

plate, at the radial end of the plate that end section is considered "a section" that is diametrically opposite the recess.

44. In response to applicant's last argument " Similar to independent claim 26, claim 21 recites that the two egg trays can be stacked by engagement of the wall sections of one of the egg trays into the recesses of the other egg tray. Thus, none of the applied references discloses or suggests the features of claim 21 for at least the same reasons as set forth above with respect to claim 26.

45. Similar to independent claim 26, claim 23 recites that a slit is formed in the support plate through which a handle of a second egg tray can be passed. Thus, none of the applied references discloses or suggests the features of claim 23 for at least the same reasons as set forth above with respect to claim 26" Stacking and the handle passing through have been addressed above.

Claim Objections

46. Claim 36 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

47. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAWN M. BRADEN whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/

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Supervisory Patent Examiner, Art
Unit 3781

/S. M. B./

Examiner, Art Unit 3781